IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

TUESDAY, THE 13TH MARCH 2007 / 22ND PHALGUNA 1928

WP(C).No. 7708 of 2007(P)

PETITIONER:

DR.R.RAJENDRAN, PROFESSOR & HEAD OF THE DEPARTMENT OF ORAL PATHOLOGY & MICROBIOLOGY, (UNDER ORDERS OF PROMOTION AS PRINCIPAL), DENTAL COLLEGE, THIRUVANANTHAPURAM.

BY ADV. SRI.ELVIN PETER P.J.

RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY THE SECRETARY TO GOVERNMENT, HEALTH AND FAMILY WELFARE DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

2. THE DIRECTOR OF MEDICAL EDUCATION, THIRUVANANTHAPURAM.

3. DR.MANGALAM, JOINT DIRECTOR OF MEDICAL EDUCATION, THIRUVANANTHAPURAM.

GOVERNMENT PLEADER (SHRI A. J. VARGHESE)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 13/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. M. JOSEPH, J.

W.P.C. NO. 7708 OF 2007 P

Dated this the 13th March, 2007

JUDGMENT

Case of petitioner, in brief, is as follows:

Petitioner is working as Professor & Head of the Department, Dental College, Thiruvananthapuram and he is the only Doctorate Degree holder in the Dental College Service. He was given Best Doctor Award by the Government of Kerala vide Ext.P1. He was also awarded with the Best Young Scientist Award vide Ext.P2. Ext.P3 evidences award of Ph.D. Degree. He was promoted as Principal in the Government Dental College, Kottayam vide Ext.P4 order dated 5.5.2006. According to petitioner, the order is not served on him. It is seen at the foot of the second page of Ext.P4 that the said order was mistakenly sent in the name of the petitioner designating him as Principal of Dental College, Kottayam. Ext.P4(a) dated 27.5.2006 is an order sent to the Principal, Dental College, Thiruvananthapuram by second respondent, Director of Medical Education, in which

the Principal was requested to relieve the petitioner forthwith and to report compliance, as the Dental Council of India Inspection at Dental College, Kottayam was proposed to be held on 1.6.2006. According to petitioner, he received it on 28.5.2006. Petitioner had certain problems. His Uncle, who is living with the petitioner, came down with a massive cerebro-vascular accident. His only daughter has secured admission to Medical Course at Mangalore. His Uncle had to be hospitalised. In such circumstances, petitioner decided to relinquish his promotion. He submitted Ext.P5 relinquishment on 30.5.2006. Ext.P6 dated 8.6.2006, however, is a Memo of Charges essentially containing three charges. Firstly, it is stated that the petitioner did not join the Dental College, Kottayam, after he was promoted as per Ext.P4. Secondly, it is alleged that there was no Principal, when the Dental Council of India inspected the Dental College, Kottayam. The third charge is that the petitioner attended the meeting conducted by the Minister for Health as Principal, Dental College, Kottayam. Ext.P7 dated

26.5.2006, is a direction by the Secretary to Government to the Director of Medical Education to relieve the petitioner, so that he can be present at the time of the inspection. Ext.P8 is dated 2.6.2006 which evidences rejection of his relinquishment. Petitioner has a case that he has filed Ext.P9 giving his explanation. However, by Ext.P10, the Government has ordered disciplinary action against him after appointing an Enquiry Officer and directed that the enquiry should be completed within one month.

2. Petitioner challenges Exts.P6 and P10 and seeks a declaration that the issuance of Ext.P6 Memo of Charges on the allegation of violation of Exts.P4, P7 and P8 orders is illegal and arbitrary. He also seeks a mandamus directing the respondents to restrain from initiating disciplinary proceedings against the petitioner.

3. Heard the learned counsel for petitioner and the learned Government Pleader. Counsel for petitioner submits that this is a fit case where the principle enunciated by the Apex Court in

State of Punjab v. V. K. Khanna (JT 2000 Suppl. (3) SC 349) is applicable. He relies on the following paragraph:

> *"37. While it is true that justifiability of the charges at this stage of initiating a disciplinary proceeding cannot possibly be delved into by any court pending inquiry but it is equally well settled that in the event there is an element of malice or mala fide motive involved in the matter of issue of a charge sheet, or the concerned authority is so biased that the inquiry would be a mere farcical show and the conclusions are well known then and in that event, law courts are otherwise justified in interfering at the earliest stage so as to avoid the harassment and humiliation of a public official. It is not a question of shielding any misdeed that the Court would be anxious, it is the due process of law which should permeate in the society and in the event of there being any affectation of such process of law, the law courts ought to rise upto the occasion and the High Court in the contextual facts, has delved into the issue on that score."*

He would submit that it is clear that the petitioner was not served with Ext.P4 and therefore, there was no basis for the first charge. As far as the second charge is concerned, petitioner was present on 1.6.2006 at the time when the team of the Medical Council was present, he points out. Regarding the third charge, it is submitted that the petitioner has not signed as Principal and, at any rate, going by the charges, petitioner was appointed as Principal by Ext.P4 and, therefore, there is no merit in the charge. It is the petitioner's case that on 14.6.2006, when Ext.P6 was served on him, Government letters dated 26.5.2006 and 2.6.2006 referred to in the Statement of Allegations were not served on him. He further contended that a perusal of Ext.P10 order does not evidence a consideration of the explanation by first respondent. On the other hand, it only refers to the statement that the Director of Medical Education has reported that the written statement of the defence is not

satisfactory. In fact, he drew my attention to the statement in the Writ Petition that Ext.P9 was not promptly delivered to the first respondent and he made enquiries and found that Ext.P9 reached in the office of the second respondent himself and it is after much effort that Ext.P9 is routed to the first respondent. He would submit that it is only to harass the petitioner that the entire exercise was made.

4. Learned Government Pleader, on the other hand, defends the action. According to him, petitioner had in fact submitted another representation earlier to Ext.P9. He would submit that the contentions of the petitioner are without any basis.

5. The decision to hold disciplinary enquiry is essentially a matter within the domain of the disciplinary authority. No doubt, in a case where it is found that the action is initiated out of malice, it is certainly open to this Court to interfere under

Article 226. This is a case where the opportunity for submitting explanation was availed of by the petitioner. He submitted his explanation. The explanation has been found to be unsatisfactory. Apparently, the first respondent was satisfied that an enquiry under Rule 15 of the Classification Rules was warranted. He must be treated as having taken the same view as taken by the Director that the explanation of the petitioner was unsatisfactory. There is no specific allegation of malafides as such. The questions raised by the petitioner are certainly matters which will engage the attention of the Enquiry Officer and it is open to him to prove his case before the Enquiry Officer. I am not also impressed with the contention raised against the appointment of third respondent as Enquiry Officer. I do not think, at this stage, that this Court should interfere with the matter. I do not think that this is a case where the decision of the Apex Court applies. The Enquiry Officer in Ext.P10

was ordered to submit the Report within one month. In such circumstances, while dismissing the Writ Petition, I make it clear that the enquiry contemplated by Ext.P10 shall be completed within the time stipulated in Ext.P10, namely within one month, which shall be reckoned from today.

K. M. JOSEPH, JUDGE

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